Liquor supplier/wholesaler relationship

HB 2732 by Brimer (Harris)

DIGEST: HB 2732 would have required liquor suppliers to enter into agreements to use one wholesaler exclusively for brands in a specified sales territory. Wholesalers that were handling a brand or label of liquor on May 1, 1995, would have had to be designated by suppliers as the exclusive wholesaler for that brand or label in that sales territory. HB 2732 would have established procedures and grounds for suppliers to change wholesalers or to alter sales territories. Wholesalers would have been required to sell liquor only to retailers in their assigned sales territory. The bill also would have allowed wineries to sell by the drink wine manufactured and bottled on the premises if wine sales were legal in the area, allowed local voters to approve the sale of wine on the premises of a winery for off-premise consumption and placed some restrictions on local distributor (package store) permitees' delivery of beer purchased from certain distributors or wholesalers to mixed beverage or private club permit holders.

GOVERNOR'S REASON FOR VETO: "House Bill 2732 represents excessive government intervention in private industry. This bill, which includes the 'Liquor Industry Fair Dealing Act,' imposes upon liquor suppliers a binding statutory relationship with a single liquor wholesaler for the exclusive regional distribution of the supplier's liquor brands in Texas. By its own provision, the bill would apply retroactively to May 1, 1995, compelling a liquor supplier to use the wholesaler with whom the supplier then had a contractual relationship. The bill further provides that a liquor supplier may only change wholesalers upon application to, and approval of, the Texas Alcoholic Beverage Commission (TABC).

"The process for application review in House Bill 2732 is overly restrictive and ambiguous on its face. Additionally, this bill unreasonably impairs the ability of suppliers and wholesalers to freely contract with each other by limiting with whom the suppliers may contract and their ability to change wholesalers. While suppliers and wholesalers voluntarily may choose to use exclusive territorial arrangements, this bill mandates their use. Without compelling evidence that the current distribution system is harmful to Texas consumers, government intervention of this magnitude is unjustified and represents bad public policy.

"House Bill 2732 also contains two provisions that appear to be unconstitutional. First, the proposed legislation affords a liquor wholesaler the right to appeal an adverse decision by the TABC on a supplier's application to change wholesalers, but fails to grant suppliers a similar remedy. The proposed bill also retroactively limits a supplier's vested rights in an existing contract by requiring the supplier to use the wholesaler who was under contract as of May 1, 1995. Thus, the retroactive imposition of previously existing contractual relationships may have the practical effect of granting the affected wholesalers a virtually perpetual franchise, dissolvable only upon the occurrence of an extraordinary circumstance."

RESPONSE: Rep. Kim Brimer, the author of HB 2732, said: "House Bill 2732 contained several improvements to the Texas Alcoholic Beverage Code. One section provided two items which would have helped the Texas wine industry. One would have allowed a winery to sell wine by the serving to tourists who were eating in the snack area or having a picnic on the grounds of the winery. Also, HB 2732 allowed the wine industry to hold a wet-dry election for wine only. This is extremely important for the state's wine producing areas.

"Another provision would have clarified the relationship between a beer wholesaler and package store permitees who also hold a local distributors permit. The bill called for local distributors to only purchase their beer from beer wholesalers who have been designated the exclusive wholesaler for the territory. This section was agreed to by all parties.

"The final section of the bill would have extended the same protection already afforded beer distributors to liquor wholesalers by assigning exclusive territories and giving liquor wholesalers an equal footing in dealing with their suppliers. For many years the beer distributors have enjoyed a good faith and fair dealing law, and I believed it was time to give the same protections to liquor distributors. It had been a proven success in the beer industry, and by extending this to liquor distributors Texas could have given the two alcoholic beverage distributor industries equal footing.

"The liquor industry has seen a dramatic consolidation on the supplier level and also at the wholesaler level. The Texas wholesalers provide over 3,000 jobs in the state and are all locally owned by individuals and base their operations within the state."

Rep. Brimer said that 98 percent of the liquor sold in Texas is supplied by out-of-state companies and of these 85 percent are foreign-owned (non-U.S.) companies. He said: "I felt it was extremely important to support Texas business first. They are the same businesses who pay taxes at every level in this state and have a community presence. Foreign-owned liquor suppliers have virtually no employees in Texas, no capital investments, no plant investments, no real presence in Texas at all — except that their products are distributed and sold by Texas wholesalers. It is my feeling that we must insure a strong local economy first — and this must be done by supporting Texas businesses before foreign businesses.

"Since this legislation was sent to the governor, there have been several instances of direct retaliation against Texas businesses (i.e. termination of distributors who supported this legislation). It is my hope that not too many Texas businesses are hurt by this type of heavy-handed retaliation, and that these actions will be noticed by the powers that be so that next session something can be done about it to avoid Texas becoming like the California marketplace (where only two wholesale liquor operations exist — one that services northern California while the other services southern California). It is the consumer who will pay when the state is left with only one or two 'mega-wholesalers' who are nothing but extensions of the foreign liquor conglomerates."

NOTES: HB 2732 passed the House on the Local and Consent Calendar and was not analyzed in a *Daily Floor Report.*